

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

OCTOBER TERM, 1922.

No. 3858.

940

No. 22, SPECIAL CALENDAR.

OTTO W. LINDBERG, APPELLANT,

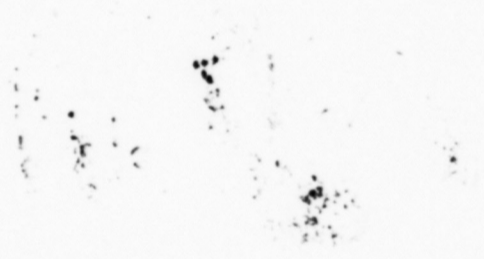
vs.

WILLIAM E. HUMPHREY, ANDREW W. MELLON, SECRETARY OF THE TREASURY, AND GUY F. ALLEN, TREASURER OF THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED AUGUST 15, 1922.

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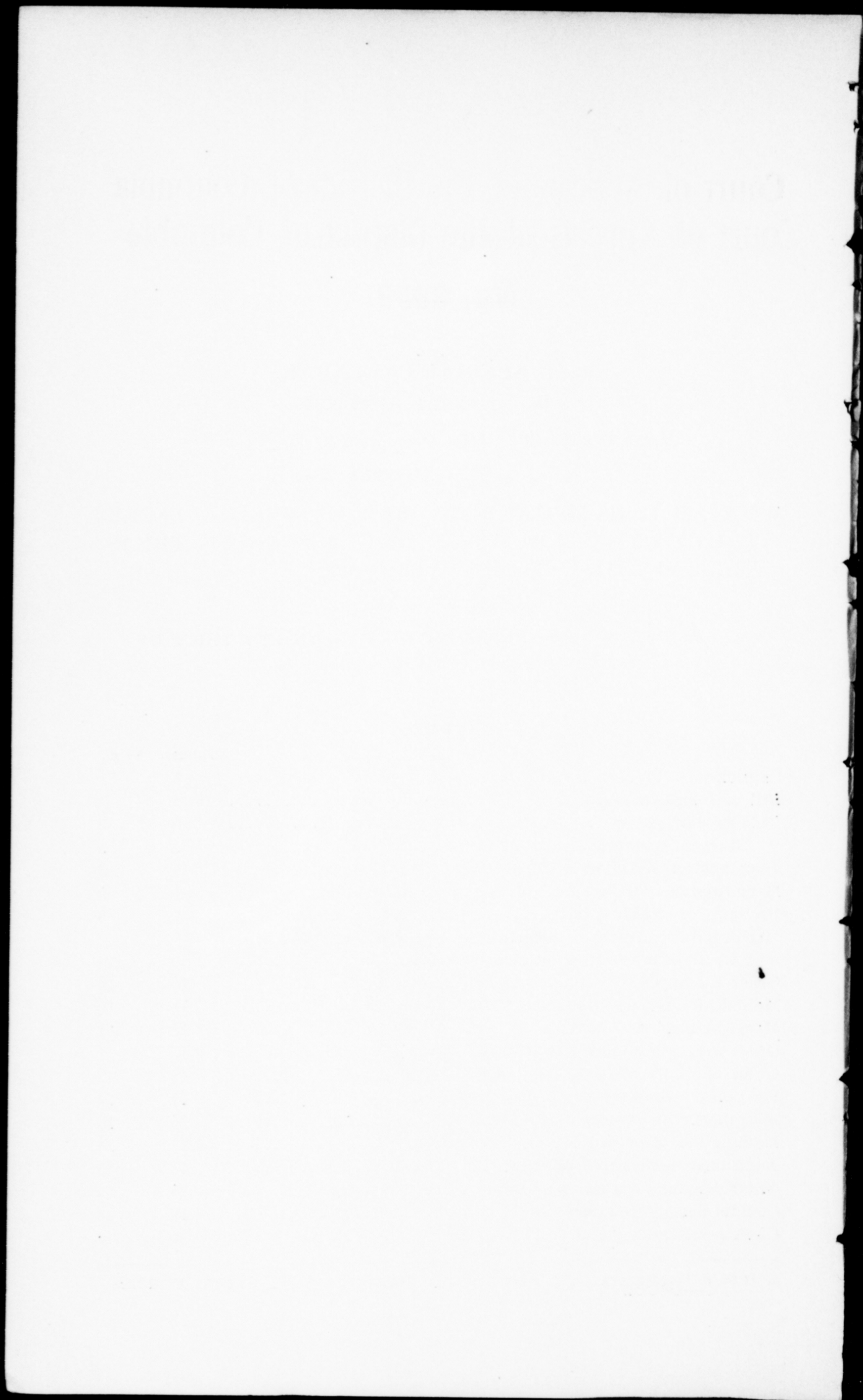
vs.

WILLIAM E. HUMPHREY, ANDREW W. MELLON, SECRETARY OF THE TREASURY, AND GUY F. ALLEN, TREASURER OF THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint.....	1	1
Rule to show cause.....	5	5
Marshal's return.....	5	5
Joint answer of David F. Houston and Guy F. Allen.....	5	6
Memorandum: Order substituting parties defendant.....	9	9
Preliminary injunction.....	9	9
Memoranda: Injunction undertaking approved and filed; order of Court of Appeals dismissing cause.....	10	10
Order for appearance of absent defendant.....	10	10
Motion of Lindberg to dismiss bill.....	11	10
Memorandums of court.....	12	11
Order overruling motion to dismiss.....	13	11
Order of Court of Appeals allowing special appeal.....	13	12
Petition of the Secretary of the Treasury.....	14	12
Assignment of errors.....	16	13
Designation of record.....	17	14
Additional designation of record.....	18	15
Order denying petition of Secretary of the Treasury.....	18	15
Counter-designation of record.....	19	15
Clerk's certificate.....	20	16



Court of Appeals of the District of Columbia.

No. 3858.

OTTO W. LINDBERG, Appellant,

vs.

WILLIAM E. HUMPHREY et al.

1 Supreme Court of the District of Columbia.

In Equity.

No. 38583.

WILLIAM E. HUMPHREY, Plaintiff,

vs.

OTTO W. LINDBERG, DAVID F. HOUSTON, Secretary of the Treasury;
JOHN BURKE, Treasurer of the United States, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill of Complaint.

Filed January 7, 1921.

In the Supreme Court of the District of Columbia.

In Equity.

No. 38583.

WILLIAM E. HUMPHREY, Plaintiff,

v.

OTTO W. LINDBERG, DAVID F. HOUSTON, Secy. of the Treas.; JOHN
BURKE, Treas. of the U. S., Defendants.

To the Supreme Court of the United States:

The plaintiff states as follows:

1. The plaintiff is a citizen of the United States and of the State of Washington, temporarily domiciled in the District of Columbia, and brings this suit in his own right.

2. The defendant Otto W. Lindberg is a citizen of the United States and resident of South River, in the State New Jersey, and is sued in his own right; the defendant David F. Houston is the Secretary of the Treasury of the United States and is sued in that capacity; and the defendant John Burke is the Treasurer of the United States and is sued in that capacity.

3. Prior to April 6, 1917, the defendant Otto W. Lindberg entered into a certain contract as subcontractor with the general contractor for certain work on and connected with the construction of the United States Post Office and Custom House Building, at Birmingham, Ala., in the execution of which subcontract the said Lindberg suffered considerable pecuniary losses due to conditions caused by the entrance of the United States into the war with Germany on April 6, 1917, and thereafter, to wit, on or about the 28th day of June, 1919, the said defendant Lindberg employed the plaintiff (who then was and still is a practicing attorney at law in the District of Columbia) as his attorney to represent him before the Congress and the Treasury Department of the United States in the matter of his securing reimbursement for the losses sustained by him, the defendant, as such subcontractor as aforesaid, and then and there, in consideration of the legal and professional services to be rendered by the plaintiff as such attorney before the said Congress and Treasury Department of the United States in drafting proposed legislation and appearing as counsel before the proper legislative committees and the officials of the Treasury Department, the said defendant undertook and agreed to pay the plaintiff as his fee a sum equal to ten per centum of any or such amount as might be recovered through legislation granting relief to the defendant in the prem-

ises, and to pay such fee to the plaintiff out of the proceeds of any draft or warrant issued to the defendant pursuant to any such legislation when and as received by the defendant, and the plaintiff then and there accepted such employment and undertook and agreed to act as attorney as aforesaid for the defendant, and thereafter, as such attorney, appeared before the proper legislative committees and in all respects performed all of his obligations under the agreement aforesaid in respect of legal and professional services before the Congress of the United States, and as a result of such efforts on his part, in large measure at least, a certain act was passed by Congress and approved by the President of the United States on August 25, 1919, entitled "An act for the relief of contractors and subcontractors for the post offices and other buildings and work under the supervision of the Treasury Department, and for other purposes," and later a certain other act, approved by the President of the United States on March 6, 1920, amending the said act of August 25, 1919, and enlarging its benefit to the said defendant Lindberg.

4. That after the passage of the said act of August 25, 1919, the plaintiff, by letters to the defendant, gave the defendant advice and instructions regarding the filing of his, the defendant's, claim aforesaid with the Treasury Department of the United States, and tendered himself ready and willing to present such claim to the Treasury Department and to render such legal and professional services necessary or proper in the premises in the further prosecution of the said claim.

5. That the said defendant Lindberg, without availing himself of the plaintiff's tendered services before the Treasury Department, in due time presented his said claim to the Treasury Department under the said act of August 25, 1919, and the same has been adjusted and settled by said department and allowed to the defendant in the amount of about \$21,000, and the defendant David F. Houston, as Secretary of the Treasury of the United States, is about to authorize the payment thereof, and the defendant John Burke, as Treasurer of the United States, is about to make payment to the said defendant Lindberg of the whole or part of the sum so found to be due and payable.

6. That the said defendant Lindberg has undertaken to repudiate his said agreement with the plaintiff and has notified the plaintiff that he refused and will refuse to pay the amount agreed upon as the plaintiff's fee in the premises, or any part thereof, and that it is the purpose and intention of the said defendant Lindberg, upon securing payment of any moneys on account of his claim as aforesaid, to remove such moneys from the jurisdiction of this court and thus deprive the plaintiff of his equitable lien upon the proceeds of the said claim when paid to the said defendant; and the plaintiff is informed and believes, and therefore avers, that the officials of the Treasury Department will, unless restrained by order of this honorable court, issue a check or warrant payable to the order of the said defendant Lindberg for the amount found to be due him, the said Lindberg, under the said act of August 25, 1919; and that upon receiving such check or warrant the said defendant Lindberg

will immediately remove the same, or the proceeds thereof, from the District of Columbia.

7. That the plaintiff is without any plain, adequate, and complete remedy at law.

The premises considered, the plaintiff prays:

1. That process issue out of this court, directed to the said defendants, Otto W. Lindberg, David F. Houston, Secretary of the Treasury, and John Burke, Treasurer of the United States, commanding them, and each of them, to appear and make answer to this bill of complaint, but not under oath, answer under oath being hereby expressly waived, and to abide by and perform the orders of the court in the premises.

2. That the plaintiff be decreed to be entitled to and have recovery of a sum equal to ten per centum of the amount found by the Treasury Department to be payable to the said defendant Otto W. Lindberg pursuant to the said act of August 25, 1919, as amended, and that the court further determine and decree that the plaintiff is entitled to a lien for the payment of his said attorney's fees upon any such moneys found by the Secretary of the Treasury to be due and authorized to be paid to the said Otto W. Lindberg under the said act of August 25, 1919, as amended and that the plaintiff is entitled to have his said fee paid out of such moneys.

4 3. That the defendant be perpetually enjoined and restrained, either by himself or his agents, from applying for, demanding, or receiving from the United States, or from any officer thereof, any warrant, draft, check, or order, or any moneys in any other manner, in payment of the said claim under the said act of August 25, 1919, as amended, except as hereinafter prayed.

4. That the defendant David F. Houston, as Secretary of the Treasurer, and the defendant John Burke, as Treasurer of the United States, and their successors in office, be enjoined from issuing or delivering to the said defendant Otto W. Lindberg any warrant, draft, check, or order, or any moneys in any other manner, in payment of the said claim of the said defendant Lindberg, or any part thereof, except as hereinafter prayed.

5. That a receiver be appointed by this honorable court, with authority to demand and receive from the United States and the officers thereof payment of the moneys authorized to be paid in settlement of the said claim of the defendant Otto W. Lindberg under said act of August 25, 1919, as amended, or any draft, check, or warrant issued on account thereof, and to receipt for same, and to retain same in his possession to await the further orders of this court in the premises.

6. That a rule may issue herein against the said defendant Otto W. Lindberg requiring him to show cause on or before a certain day why he should not be enjoined from applying for, demanding, or receiving from the United States, or any officers thereof, any warrant, draft, check, or order, or money in any other manner, in payment of said claim or any part thereof.

7. That a rule may issue herein against the defendant David F. Houston, as Secretary of the Treasury, and defendant John Burke,

as Treasurer of the United States, and each of them, directing them, and each of them, to show cause in this court on or before a certain day why they, and each of them, should not be restrained by a preliminary injunction or restraining order from issuing or delivering any warrant, draft, check, or order, or moneys in any other manner, to the defendant, the said Otto W. Lindberg, in payment of said claim of said Lindberg, or any part thereof.

8. And that the plaintiff have such other and further relief in the premises as to this honorable court shall seem meet and proper and as the exigencies of the case may require.

WILLIAM E. HUMPHREY,
Plaintiff.

WILLIAM C. PRENTISS,
Attorney for Plaintiff.

5 DISTRICT OF COLUMBIA, ss:

William E. Humphrey, being first duly sworn, deposes and says that he has read the foregoing bill of complaint, by him subscribed and knows the contents thereof, and that the matters and things therein stated upon personal knowledge are true, and those stated upon information and belief he believes to be true.

WILLIAM E. HUMPHREY.

Subscribed and sworn to before me this 7 day of Jan., 1921.

[SEAL.]

JOS. H. BARTENSTEIN,
Notary Public.

Rule to Show Cause.

Filed January 7, 1921.

* * * * *

Upon consideration of the bill of complaint filed in the above-entitled cause, it is this 7th day of January, 1921,

Ordered, That the above-named defendants, and each of them, show cause, on or before the 21st day of January, 1921, why the prayers of said bill of complaint should not be granted, and they be severally enjoined and restrained as prayed therein; provided a copy of said bill of complaint and of this rule be served upon each of said defendants on or before the 10th day of January, 1921.

WENDELL P. STAFFORD,
Justice.

Marshal's Return.

Served a copy of the within rule on David Houston—John Burke, by personal service on G. F. Allen, Asst. Treas.—personally; Otto W. Lindberg not to be found.

Jan. 7, 1921.

MAURICE SPLAIN,
U. S. Marshal.

Joint Answer of David F. Houston and Guy F. Allen.

Filed March 18, 1921.

* * * * *

The defendant David Franklin Houston, Secretary of the Treasury, and Guy F. Allen, Acting Treasurer of the United States, now and at all times hereafter saving and reserving unto themselves all exceptions to the imperfections, uncertainties, and defects in the bill of complaint and rule to show cause filed herein, and reserving unto themselves all objections and exceptions to the jurisdiction of the court to direct them, as the Secretary of the Treasury and as the Acting Treasurer of the United States, respectively, or either of them, to do or perform the act prayed in the bill of complaint, for answer to said bill of complaint and rule to show cause herein, or to so much thereof as they are advised it is material for them to answer, answering say:

1. That they have no knowledge as to the truth or accuracy of the allegations contained in the first paragraph of the bill of complaint, and, if material, call for strict proof thereof.

2. That they have no knowledge as to the residence or citizenship of the defendant Otto W. Lindberg, but if said allegation is material, call for strict proof thereof; that they admit that the defendant David F. Houston is Secretary of the Treasury of the United States; that they deny that John Burke is at this time Treasurer of the United States, but show to the court that he formerly held such position but recently tendered his resignation thereof, which resignation was accepted by the President of the United States on January 5, 1921, and that Guy F. Allen is now the Acting Treasurer of said United States.

3. That these defendants have no knowledge as to the allegations contained in paragraph three of the bill, and therefore can neither admit nor deny the same, and if material to the issues in this cause, call for strict proof thereof; except that, on information and belief, these defendants say that the records of the Treasury Department do not show that the defendant Lindberg entered into a contract as a subcontractor with the general contractor for certain work connected with the construction of the United States Post Office and Custom House Building at Birmingham, Alabama, but that said records show that under date of March 21, 1917, said defendant Lindberg entered into a contract with the United States of America by which he agreed to furnish mechanical equipment of the building referred to; and, further, these defendants admit that the acts of Congress referred to in said paragraph were passed and approved.

4. That these defendants have no knowledge as to the allegations contained in paragraph four of the bill of complaint and therefore can neither admit nor deny the same.

5. That these defendants have no knowledge as to the actions of the defendant Lindberg in presenting his claim to the Treasury Department, nor of the tendered services in connection therewith by

the plaintiff as alleged in paragraph five of the bill, and therefore can neither admit nor deny the same; and, further answering said paragraph, these defendants show to the court that the contract above referred to for the mechanical equipment in said Post Office and Custom House Building at Birmingham, Alabama, has not been completed, although the defendant Lindberg has submitted a claim to the Treasury Department in connection therewith on account of losses incident to war conditions, which claim amounts to \$35,836; but these defendants deny that said claim has been adjusted and settled by said department and an allowance made to the said defendant, and further deny that the defendant David F. Houston, as Secretary of the Treasury of the United States, is about to authorize the payment of any allowance and that the defendant Guy F. Allen, as Acting Treasurer of the United States, is about to make payment of said claim to defendant Lindberg in whole or in part.

6. That these defendants have no knowledge as to the allegations of the sixth paragraph of said bill regarding the repudiation of the agreement between the plaintiff and the defendant Lindberg, nor as to the refusal of the said defendant Lindberg to pay the plaintiff the amount alleged to have been agreed upon as a fee in the premises, nor as to the purpose of the said defendant Lindberg upon securing the payment of any moneys allowed him on account of his claim made as aforesaid, as alleged in said paragraph. Further answering said paragraph, these defendants say that in the event that the claim of the said defendant Lindberg is filed in accordance with the provisions of the act of Congress of August 25, 1919, and under the regulations prescribed by the Secretary of the Treasury; and further, in the event that upon the auditing and settling of said claim it shall be determined by the Secretary of the Treasury that he is entitled to relief under the provisions of said act, that payment in the amount found to be due him will be made by the Treasury Department, unless it is enjoined from so doing. But these defendants further show that under the provisions of said act of Congress the allowance of claims is solely within the discretion of the Secretary of the Treasury, and that at this time there has been no determination as to the claim of said defendant Lindberg, nor has his claim been audited and settled; and that at this time there is nothing due him under the provisions of the aforesaid act of Congress, nor has the Secretary of the Treasurer reported to Congress any amount found to be due to said defendant.

7. That these defendants deny that the plaintiff is without a plain, adequate, and complete remedy at law.

8. And these defendants pray that the bill of complaint and the rule to show cause may be dismissed as to them and each of them on this answer, for the reasons following, among others, apparent on the face of the bill and the rule to show cause; that is to say:

1. It is a suit against the United States;
2. It seeks to control the administrative discretion vested in the defendants as Secretary of the Treasury and the Treasurer of the United States; and

3. The plaintiff has a full, adequate, and complete remedy at law. And having fully answered, they pray to be hence dismissed with their reasonable costs in this belief sustained.

D. F. HOUSTON,
Secretary of the Treasury.
 L. B. JAW M
 G. F. ALLEN,
Acting Treasurer of the United States.
 L. B. JAW

JOHN E. LASKEY,
*Attorney of the United States in
 and for the District of Columbia.*
 JAMES P. SCHICK,
*Assistant Attorney of the United States
 in and for the District of Columbia.*

DISTRICT OF COLUMBIA, ss:

David Franklin Houston, being duly sworn according to law, on oath deposes and says that he is the Secretary of the Treasury of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated as of his own knowledge are true and those stated as upon information and belief he believes to be true.

D. F. HOUSTON,
Secretary of the Treasury.
 L. B. JAW

Subscribed and sworn to before me this 20th day of January, A. D. 1921.

[SEAL.]

SAMUEL H. MARKS,
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

Guy F. Allen, being duly sworn according to law, on oath deposes and says that he is the Acting Treasurer of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated as of his own knowledge are true and those stated as upon information and belief he believes to be true.

G. F. ALLEN,
Acting Treasurer of the United States.
 L. B. JAW

9 Subscribed and sworn to before me this 20th day of January, A. D. 1921.

[SEAL.]

F. P. TROTT,
Notary Public, D. C.

Com. expires Oct. 21, 1922.

Memorandum.

April 7, 1921.

Order substituting Andrew W. Mellon in place of defendant, David F. Houston, retired, and Guy F. Allen in place of John Burke, retired—filed.

Preliminary Injunction.

Filed April 8, 1921.

* * * * *

This case coming on to be heard upon the bill of complaint and the plaintiff's motion for injunction pendente lite, and the answer of the defendants, David F. Houston, Secretary of the Treasury, and Guy F. Allen, Acting Treasurer of the United States, to the said bill of complaint and to the rule to show cause heretofore issued herein, and the same having been argued by counsel for the respective parties and considered by the court, it is now, this 8th day of April, 1921, by the court ordered and adjudged that pending further proceedings herein and until the further order of the court the defendants, Andrew W. Mellon, as Secretary of the Treasury, and Guy F. Allen, as Treasurer of the United States, and their successors in office, be, and hereby are, restrained and enjoined from issuing or delivering to the defendant, Otto W. Lindberg, his agents, attorneys, or assigns, any further warrant, draft, check, or order, or any moneys in any other manner, in payment or on account of the claim of the said Otto W. Lindberg, or any part thereof, in excess of ninety per centum of any amount or amounts heretofore found payable and allowed or which hereafter may be found payable and allowed, to said Otto W. Lindberg by the Secretary of the Treasury pursuant to the act of Congress of August 25, 1919, as amended and appropriated for by Congress; and the said Andrew W. Mellon, as Secretary of the Treasury, and the said Guy F. Allen, as Treasurer of the United States, be, and hereby are, further enjoined and commanded to withhold and retain pending further order of the court ten per centum of each and every amount heretofore found payable and allowed or which hereafter may be found payable and allowed to the said Otto W. Lindberg by the Secretary of the Treasury pursuant to the acts of Congress aforesaid, as otherwise the plaintiff's claim, if finally established, may be lost to plaintiff; provided, however, that this injunction shall not become effective except upon the precedent condition that the plaintiff execute and file in this cause an undertaking for \$500 as required by law and the rules of this court, with leave to deft. to move for an increase in security.

WENDELL P. STAFFORD, *Justice.*

From the foregoing order the defendants, Andrew W. Mellon and Guy F. Allen, in open court note an appeal to the Court of Appeals of the District of Columbia.

WENDELL P. STAFFORD,
Justice.

Memoranda.

April 8, 1921.—Injunction undertaking approved and filed.

February 11, 1922.—Order of Court of Appeals dismissing above cause on February 10, 1922, by order of appellants' attorney—filed.

Order for Appearance of Absent Defendant.

Filed May 11, 1922.

* * * * *

The object of this suit is to enforce a lien for attorneys' fees against a fund in the Treasury of the United States payable to the defendant Otto W. Lindberg;

On motion of the plaintiff, it is this 11 day of May, 1922, ordered that the defendant Otto W. Lindberg cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter, and the Washington Post before said day.

JENNINGS BAILEY,
Justice.

Motion of Defendant Lindberg to Dismiss Bill.

Filed May 19, 1922.

* * * * *

Comes now Otto W. Lindberg, named as one of the defendants in the above entitled cause, and appearing specially and only for the purpose of this motion to question the jurisdiction of the court in this proceeding and for no other purpose, and not hereby submitting himself generally to the jurisdiction of this court, does now move to quash the service being attempted on him by publication, pursuant to order of this court dated May 11, 1922, and to vacate said order, and to dismiss the bill of complaint filed in the above entitled cause, and for the grounds of this motion shows as follows:

1st. That it appears from the allegations of said bill that this defendant is a resident of South River, N. J. and not a resident of the District of Columbia, and therefore cannot be reached by the ordinary process of this Court.

2nd. That the debt of the United States to this defendant, which is the subject matter of this dispute, has no legal situs in this District, and that therefore this court has no jurisdiction to interfere with the same or to substitute publication for personal service of process on this defendant.

3d. That the plaintiff's remedy, if at all, is in a court of law and that there is not sufficient ground set forth in said bill of complaint to give a court of equity jurisdiction thereof.

12 4th. That it does not appear from said bill of complaint that plaintiff is a judgment creditor or that he has any valid lien upon the fund in question, or that defendants is insolvent, or any other sufficient ground for the interposition of a court of equity.

BYNUM E. HINTON,
*Appearing Specially and Only
for the Purpose of This Motion.*

William C. Prentiss, Esq.,
Attorney for Plaintiff Humphrey:

Please take notice that the foregoing motion will be called to the attention of the court on Friday, May 26th, 1922.

BYNUM E. HINTON,
Appearing Specially, as per Above.

Memorandum of Court.

Filed June 20, 1922.

* * * * *

The motion to quash the order of publication and to dismiss the bill will be overruled.

BAILEY, J.

Memorandum of Court.

Filed June 26, 1922.

* * * * *

The memorandum opinion filed June 20-1922 will be followed without prejudice to the right of defendant Lindberg to raise the same question on the final hearing of the Cause.

BAILEY, J.

13 *Order Overruling Motion to Dismiss.*

Filed June 27, 1922.

* * * * *

This case coming on to be heard on the motion of Defendant Otto W. Lindberg, appearing specially for the purpose, to quash the Order for Publication heretofore issued herein, and dismiss the Bill of Complaint, the same having been argued by counsel for the respective parties and considered by the Court, it is this 27 day of June, A. D. 1922, By the Court Ordered that the said Motion be and the same hereby is overruled, without prejudice to the right of said

Defendant Lindberg to renew said motion or any or all of the objections contained therein, upon the final hearing of the cause.

JENNINGS BAILEY,
Justice.

Order of Court of Appeals Allowing Special Appeal.

Filed July 24, 1922.

April Term, 1922.

No. 730, Original Docket.

Equity. No. 38583.

OTTO W. LINDBERG, Petitioner,

vs.

WILLIAM E. HUMPHREY, ANDREW W. MELLON, Secretary of the Treasury, and GUY F. ALLEN, Treasurer of the United States.

On consideration of the Petition for the allowance of a Special Appeal from the order of the Supreme Court of the District of Columbia in the above entitled cause, entered therein on the
14 Twenty-Seventh Day of June A. D. 1922, It is by the Court this day ordered that said petition be, and the same is hereby, granted.

Per MR. CHIEF JUSTICE SMYTH,
July 24, 1922.

A true copy.

Test:

[SEAL.] HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Petition of the Secretary of the Treasury.

Filed July 27, 1922.

* * * * *

To the Supreme Court of the District of Columbia:

This petitioner respectfully shows unto the Court as follows:

(1) That on the 8th day of April, 1921 an order was passed in this Court temporarily enjoining the Secretary of the Treasury together with the Treasurer of the United States from paying to the defendant Otto W. Lindberg, ten per cent of any amount allowed to the said Otto W. Lindberg on account of claim made by him under the Act of August 25, 1919 as amended, for losses sustained by the said Otto W. Lindberg in connection with the erection of the Post Office Building under war conditions.

(2) At the time the said injunction was passed by this Honorable Court the amount of the said claim had only been partially audited and there had been found to be due to the said Otto W. Lindberg the sum of about \$2,100.00. Consequently the bond of injunction was fixed by this Honorable Court in the sum of \$500.00.

15 (3) Since the passing of the said order of injunction the claim of said Otto W. Lindberg has been fully audited and allowed in the sum of \$85,788.55 and that pursuant to said injunction there has been retained and now held by this defendant the sum of \$8,578.66 as a part of the money found to be due to the said Otto W. Lindberg.

(4) This petitioner is advised and believes that the amount of the bond on injunction heretofore filed in this cause is now insufficient to cover the amount of interest and damages that might accrue as a result of the withholding of the fund under the said injunction order from the claimant.

Wherefore, the petitioner prays that an order may be passed, requiring the plaintiff in this case, William E. Humphrey, to file an additional bond to cover whatever amount may be sufficient to cover the loss and damage sustained as a result of withholding by this petitioner of the money found to be due the said Otto W. Lindberg.

A. W. MELLON,
Secretary of the Treasury.

DISTRICT OF COLUMBIA, *To wit:*

A. W. Mellon deposes and says that he is Secretary of the Treasury. That he has read the foregoing and annexed petition by him subscribed and that he knows the contents thereof, that the allegations made therein upon his own personal knowledge are true and those made upon information and belief, he believes to be true.

A. W. MELLON,
Secretary of the Treasury.

16 Subscribed and sworn to before me this 26th day of July
A. D. 1922.

[SEAL.]

H. W. STUTLER,
Notary Public.

J. A. W.

Assignment of Errors.

Filed July 28, 1922.

* * * * *

Defendant Otto W. Lindberg assigns the following errors in his appeal in the above entitled cause:

1st. The court erred in not holding that the debt of the United States to defendant Lindberg, which is the subject matter of this dispute, has no legal situs in the District of Columbia, and is not property within this District within the meaning of Sec. 105 of the Code authorizing the substitution of publication for personal service of process.

2d. The court erred in not vacating the order of May 11, 1922, and in not quashing the purported service thereby attempted to be made on said defendant Lindberg.

3d. The court erred in not holding that plaintiff's remedy, if at all, is in a court of law, and that there is not sufficient ground set forth in said bill of complaint to give a court of equity jurisdiction thereof.

4th. The court erred in not holding that plaintiff has no valid lien upon the fund described in said bill of complaint.

5th. The court erred in not entering an order dismissing the bill of complaint.

BYNUM E. HINTON,
Attorney for Defendant
Otto W. Lindberg, Appearing Specially.

Designation of Record.

Filed July 28, 1922.

* * * * *

The Clerk will prepare transcript of record for appeal in the above entitled cause and include therein the following:

- 1st. Original bill of complaint and rule to show cause.
- 2d. Memorandum showing Marshal's return on service of papers.
- 3d. Answer of defendants, the Secretary of the Treasury and Treasurer of the United States, to the rule to show cause.
- 4th. Memorandum showing substitution of certain parties defendant.
- 5th. Decree granting temporary injunction, filed April 8, 1921.
- 6th. Memorandum showing appeal taken to the Court of Appeals by the Treasury officials and that same was dismissed.
- 7th. Order of May 11, 1922, directing service of process by publication on defendant Otto W. Lindberg.
- 8th. Motion of defendant Otto W. Lindberg to quash order of publication and dismiss bill of complaint.
- 9th. Order overruling said motion.
10. Assignment of errors and this designation of record.

BYNUM E. HINTON,
Attorney for Otto W. Lindberg, Appearing Specially.

Received copy of foregoing designation of record this 25 day of July, 1922.

WILLIAM C. PRENTISS,
Attorney for William E. Humphrey.
VERNON E. WEST,
Attorney for Andrew W. Mellon, Secretary
of the Treasury, and Frank White, Treas-
urer of the United States.

18

Additional Designation of Record.

Filed July 28, 1922.

* * * * *

The Clerk in preparing transcript of record for appeal in the above entitled cause, will please include therein the following, in addition to that heretofore requested:

Petition of officials of the Treasury Department, filed July 27, 1922, for increase of plaintiff's injunction bond.

BYNUM E. HINTON,
Attorney for Otto W. Lindberg, Appearing Specially.

Received copy of foregoing designation of record this 28th day of July, 1922, under protest that the petition mentioned has no proper place in the record on appeal.

WILLIAM C. PRENTISS,
Attorney for William E. Humphrey.

Received copy of the foregoing designation of record this the 28th day of July, 1922.

J. H. BILBREY,
Attorney for Andrew W. Mellon, Secretary of the Treasury, and Frank White, Treasurer of the United States.

Order Denying Petition of Secretary of the Treasury.

Filed August 2, 1922.

* * * * *

This cause coming on to be heard on July 31, 1922, upon the petition of the Secretary of the Treasury praying that the plaintiff be required to file additional security in support of the injunction, it is this 2nd day of August, 1922, nunc pro tunc ordered

19 That the prayers of said petition be and they are hereby denied.

A. A. HOEHLING,
Justice.

Counter-Designation of Record.

Filed August 2, 1922.

* * * * *

The Clerk will please include in its Designation of Record on Appeal in the above entitled case, the following, in addition to the record designated by appellant Lindberg:

1. Memo. of order of court of July 31, 1922, denying the petition of the officials of the Treasury Department for an order requiring plaintiff Humphrey to file additional security or undertaking in support of the injunction, by reason of the increase in the allowances to defendant Lindberg, after the injunction order was granted.

2. This counter-designation.

PEYTON GORDON,
*United States Attorney in and for
the District of Columbia.*

20

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 19, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 38583 in Equity, wherein William E. Humphrey is Plaintiff and Otto W. Lindberg et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 14th day of August, 1922.

[Seal of the Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

K. M. H./E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3858. Otto W. Lindberg, appellant, vs. William E. Humphrey et al. Court of Appeals, District of Columbia. Filed Aug. 15, 1922. Henry W. Hodges, clerk.

112